

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF THE CHIEF COUNSEL
FEBRUARY 7, 2018**

ITEM 13

SUBJECT

CONSIDERATION OF ADOPTION OF A PROPOSED ORDER ON OWN MOTION REVIEW OF CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD ORDER NO. R5-2012-0116, WASTE DISCHARGE REQUIREMENTS GENERAL ORDER FOR GROWERS WITHIN THE EASTERN SAN JOAQUIN RIVER WATERSHED THAT ARE MEMBERS OF A THIRD-PARTY GROUP (SWRCB/OCC FILES A-2239(a)-(c)).

DISCUSSION

On December 7, 2012, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted Waste Discharge Requirements General Order No. R5-2012-0116 for Growers within the Eastern San Joaquin River Watershed that are Members of a Third-Party Group (Eastern San Joaquin Agricultural General WDRs). The Eastern San Joaquin Agricultural General WDRs authorize discharges from irrigated lands operations to waters of the state within the Eastern San Joaquin River Watershed and set forth a number of requirements for monitoring and planning, for implementation and evaluation of management practices, and for participation in various education and outreach events.

In response to the Central Valley Water Board's adoption of the Eastern San Joaquin Agricultural General WDRs, three timely petitions for review were filed with the State Water Resources Control Board (State Water Board) by Asociación de Gente Unida por el Agua, et al., by the California Sportfishing Alliance and California Water Impact Network, and by San Joaquin County Resource Conservation District, et al. On August 5, 2014, anticipating the need for additional review time past a 270-day regulatory deadline, in order to adequately address the petitions, the State Water Board adopted [Order WQ 2014-0135](#), taking this matter up on its own motion. The own motion order also allowed for completion of a report by an agricultural expert panel prior the State Water Board making decisions on related issues raised in the petitions.

The agricultural expert panel, as well as a previously-convened nitrogen tracking task force, was set up as a result of a legislative effort to address nitrate in groundwater. In 2008, the Legislature added section 83002.5 to the Water Code requiring the State Water Board to develop pilot projects focusing on nitrate in groundwater in the Tulare Lake Basin and the Salinas Valley, and to submit a report to the Legislature. In its report, the State Water Board made fifteen recommendations including Recommendation #11, calling for a task force to identify intended outcomes and expected benefits of a nitrogen mass balance tracking system, and Recommendation #14, calling for a panel of experts to assess existing agricultural nitrate control programs and develop recommendations to ensure that ongoing efforts are protective of groundwater quality.

The task force (Nitrogen Tracking Task Force) was convened by the California Department of Food and Agriculture (CDFA), in coordination with the water boards and with participation by stakeholders and experts from agricultural organizations, academia, and the environmental advocacy community. The Nitrogen Tracking Task Force issued a final report in

December 2013.¹ The panel of experts (Agricultural Expert Panel) was convened by the State Water Board, in coordination with CDFA, and considered all existing studies, programs, and efforts for agricultural nitrate control, including the recommendations of the Nitrogen Tracking Task Force. The State Water Board additionally referred a number of questions regarding the development of an appropriate agricultural regulatory program to the Agricultural Expert Panel when it adopted [Order WQ 2013-0101](#), reviewing the Central Coast Regional Water Quality Control Board's waiver of WDRs for irrigated lands, on September 24, 2013. These questions were primarily questions specific to agricultural nitrate control programs, but also included questions regarding appropriate risk or vulnerability determinations for purposes of tiering requirements and regarding effective surface water monitoring. The Agricultural Expert Panel issued a final report on September 9, 2014.²

State Water Board staff released a proposed order reviewing the Eastern San Joaquin Agricultural General WDRs on February 8, 2016. The State Water Board held two Board workshops, on May 4, 2016, in Sacramento, and on May 17, 2016, in Fresno. The written comment period closed on June 1, 2016. State Water Board staff subsequently issued a second proposed order on October 10, 2017, with significant revisions based on the comments received. The State Water Board held a workshop to hear oral comment on the second proposed order on December 6, 2017. The written comment period closed on December 22, 2017. The State Water Board staff circulated a set of proposed revisions to the second proposed order on January 19, 2018.

The second proposed order directs a number of revisions to the General WDRs, primarily to add greater specificity and transparency in reporting of management practice implementation, to require reporting of certain nitrogen application-related data needed for management of excess nitrogen use, and to require sampling of on-farm drinking water wells for nitrates. Many of the proposed revisions to the Eastern San Joaquin Agricultural General WDRs implement the conclusions of the Agricultural Expert Panel. Some of the proposed direction, if adopted, would apply to agricultural programs statewide, as indicated in the second proposed order.

POLICY ISSUE

California's agricultural industry produces more than 400 commodities at over 75,000 farms and ranches and is a significant part of the state's economy, providing a large percentage of fruits and vegetables for the nation. However, the same activities that are essential to producing a crucial, reliable food supply – e.g. pesticide use to control pests, nitrogen to fertilize crops, irrigation to water crops – also underlie many critical impacts to water quality associated with agricultural activity. The crucial policy question is how to strike the appropriate balance in addressing these impacts while at the same time preserving the economic viability of agriculture. A significant component of this policy question is the appropriate level and detail of data reporting that should be required of growers to support analyses that can inform selection of management practices and ongoing innovation to address water quality concerns.

¹ The Nitrogen Tracking Task Force's final report is available at <https://www.cdfa.ca.gov/environmentalstewardship/PDFs/NTRSTFFinalReport122013.pdf>.

² The Agricultural Expert Panel proceedings are detailed at http://www.swrcb.ca.gov/water_issues/programs/agriculture/.

FISCAL IMPACT

The proposed order, if adopted, may require additional costs to the Central Valley Water Board and the State Water Board for data management and analysis.

REGIONAL BOARD IMPACT

The proposed order, if adopted, will require revisions to the programmatic requirements of the irrigated lands regulatory program implemented by the Central Valley Water Board. Similarly, other regional water boards may need to make adjustments to their irrigated lands programs.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the second proposed order, with the revisions circulated on January 19, 2018.

<p>State Water Board action on this item will assist the Water Boards in reaching Goals 2, 4, 5, and 6 of the Strategic Plan Update: 2008-2012 to improve and protect groundwater quality in high-use basins by 2030, to comprehensively address water quality protection and restoration, to improve transparency and accountability by ensuring that Water Board goals and actions are clear and accessible, and to enhance consistency across the Water Boards, on an ongoing basis, to ensure Water Board processes are effective, efficient, and predictable.</p>
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